



ORIGINAL

Federal Communications Commission  
Washington, D.C. 20554

OCT 13 1999

The Honorable Phil Gramm  
United States Senate  
370 Russell Senate Office Building  
Washington, DC 20510-4302

Dear Senator Gramm:

Thank you for your letter on behalf of your constituent, Ms. Diane C. Wetherbee, City Attorney, City of Plano, Texas. Ms. Wetherbee believes that the Commission lacks the authority to adopt rules in WT Docket No. 99-217 and CC Docket No. 96-98 to facilitate reasonable and nondiscriminatory access by competitive telecommunications providers to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. Moreover, Ms. Wetherbee believes that the Commission lacks the authority to take action on its inquiry in WT Docket No. 99-217 into State and local policies regarding telecommunications providers' access to public rights-of-way and taxation of telecommunications providers and services.

The Commission sought comment on these matters in FCC 99-141, released on July 7, 1999. This item represents another step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, this item addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, including, for example, apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities. The item also explores the effect of State and local rights-of-way and taxation policies on telecommunications competition.

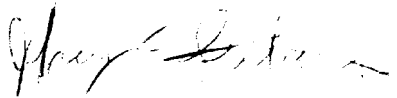
The purpose of this item is to explore broadly what actions the Commission can and should take to promote facilities-based competition to the incumbent local exchange carriers (LECs). Thus, the item seeks comment on a wide range of potential Commission actions, in most instances without reaching tentative conclusions. Thus, in addition to proposing and seeking comment on obligations that would apply to incumbent LECs and other utilities under certain provisions of the Communications Act, the item neutrally seeks comment on the legal and policy issues raised by a possible requirement that building owners who allow any telecommunications carrier access to facilities that they control make comparable access available to other carriers on a nondiscriminatory basis. The item also seeks comment from both service providers and State and local governments regarding their rights-of-way management experiences, without proposing

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any specific action. In addition, the item seeks comment on whether State and local taxes on telecommunications providers are imposed fairly so as not to impede competition, but notes that the Commission's legal authority to preempt State and local tax policies is extremely limited.

Your letter and your constituent's letter have been placed in the record of this proceeding and will be given every consideration by the Commission. Thank you for your interest in this proceeding.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey S. Steinberg", written in a cursive style.

Jeffrey S. Steinberg  
Deputy Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau



8/5/99

August 5, 1999

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Cheryl D. Williams  
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Place 8

Thomas H. Muehlenbeck  
City Manager

Chairman William Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**Re: Ex Parte Filing in Cases WT 99-217; CC96-98; Preemption of State/Local Rules and Deed Restrictions Affecting Placement of Telecom Antennas; Preempting Taxation of Telephone Companies**

Dear Chairman Kennard:

Please do not adopt the rule proposed in these cases allowing any telephone company that serves tenants of a building to place their antenna and related facilities in and on the buildings notwithstanding any governmental regulations to the contrary or the building owners' objections.

In some states, 70 or more new telephone companies have been certificated to provide service. If you include the wireless phone companies under your rule you may have 100 companies allowed to place their wires and antennas on and in a building, including the roof – all without the owner's permission and possibly contrary to government regulations.

The FCC lacks the authority to enact this rule because it violates property rights, specifically, the owner of the property whose rights include who may enter onto their property and locate fixtures thereon. Congress did not give the FCC the authority to condemn space for phone companies in every building in the country, and yet this is the effect of this rule.

In addition to property owners' rights, governments are also adversely affected. For example, building codes are for engineering related safety reasons. These regulations vary by region due to building type to account for many factors such as potential earthquakes,

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hurricanes, tornadoes and maximum amount of snow and ice. If antennas are too heavy or too high, they pose a direct threat to the building's integrity and safety of persons. Further, if antennas are not properly secured, they may fall and damage the building, or injure the inhabitants or passers-by.

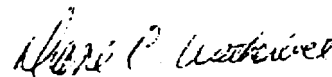
Similarly, zoning laws are matters of local concern and are designed to protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns – which we do every day, with success without the necessity for this rule.

It is Plano's position that the telephone providers' complaints about rights-of-way management and fees are overblown, as shown by the small number of court cases on this – only about a dozen nationwide in the three years since the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies, this number of cases shows that the system is working, and the proposed rule is unnecessary.

Finally, their request to preempt local and state taxes because of the concern that the combined Federal, state and local tax burden on new phone companies is too high is not only unfounded, the FCC has no authority to affect state or local taxes any more that it can affect Federal taxes.

For these reasons, please reject the proposed rule and take no action on rights-of-way and taxes.

Very truly yours,



Diane C. Wetherbee  
City Attorney

DW/lk

c: Thomas H. Muehlenbeck, City Manager  
Phyllis Jarrell, Director of Planning

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